

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1146 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

ASHOK PAN HOUSE

Appearance:

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Appellant-State

Respondent No.1 served

Respondent No.2 dead

Shri P.M. Thakkar, Advocate, for Respondent No.3

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the

learned Judicial Magistrate (First Class) at Visavadar on 21st June 1986 in Criminal Case No. 243 of 1985 is under challenge in this appeal at the instance of the State Government under sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate acquitted the respondents herein of the offences punishable under sections 7 and 16(1-A) of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. Respondent No.1 herein was a pan shop representing a partnership firm at the relevant time and respondents Nos. 2 and 3 herein were its partners. The Food Inspector of that area is stated to have purchased betel nut chips to the tune of 450 gms. from respondent No.2 herein on 17th April 1985 as a sample for the purposes of the Act. It was divided into three parts and each part was separately packed in a container and it was properly sealed. One sample was sent to the Public Analyst at Bhuj for its analysis and report. The two other sample packets were sent to the local authority. The report of the Public Analyst showed the sample to be adulterated. Thereupon, after obtaining the consent of the local authority, the Food Inspector filed his complaint in the Court of the Judicial Magistrate (First Class) at Visavadar charging the respondents with the offences punishable under sections 7 and 16(1-A) of the Act. It came to be registered as Criminal Case No. 243 of 1985. The respondents were informed of institution of the prosecution as provided under sec. 13 of the Act. They did not choose to send the sample for its analysis by the Central Food Laboratory at Pune. The charge against the respondents-accused came to be framed on 12th February 1986. No accused pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each accused under sec. 313 of the Cr.P.C. and after hearing arguments, by his judgment and order passed on 21st June 1986 in Criminal Case No. 243 of 1985, the learned Judicial Magistrate (First Class) at Visavadar acquitted the respondents herein of the charge levelled against them. That aggrieved the State Government. It has therefore preferred this appeal before this Court after obtaining its leave under sec. 378 of the Cr.P.C.

3. It transpires from the material on record that respondent No.2 breathed his last during the pendency of this appeal on 16th November 1991. This appeal against him would stand abated in view of the relevant provisions

contained in sec. 394 of the Cr.P.C.

4. Learned Additional Public Prosecutor Shri Divetia for the appellant-State has taken me through the entire evidence on record in support of his submission that the view taken by the learned trial Magistrate cannot be sustained in law. Learned Additional Public Prosecutor Shri Divetia has submitted that the learned trial Magistrate ought to have come to the conclusion that the prosecution could bring the guilt home to the respondents-accused beyond any reasonable doubt. Learned Advocate Shri Thakkar for respondent No.3 has on the other hand submitted that the learned trial Magistrate has carefully examined and appreciated the evidence on record and has come to the conclusion that the guilt has not been established against the respondents beyond any reasonable doubt. It has been urged that the view taken by the learned trial Magistrate is a possible view and it calls for no interference by this Court in this appeal in view of well-settled principles of law governing acquittal appeals.

5. It transpires from the material on record that the learned trial Magistrate found material contradictions in the evidence of the Food Inspector and the panch witness. According to the Food Inspector, betel nut chips were purchased in one lot whereas the panch witness has said that it was purchased in three different lots of 150 gms. each. Besides, according to the Food Inspector, what was purchased by way of sample was betel nut chips whereas the panch witness has stated that the article of food purchased by way of sample was betel nut powder. These material contradictions prompted the learned trial Magistrate to draw an inference that the sample was not purchased in the presence of the panch witness.

6. The learned trial Magistrate also relied on certain statements in the cross-examination of the panch witness in support of the aforesaid inference drawn by him. According to the panch witness, he had heart-burning with respondent No.2 accused on account of closure of his account in respondent No.1 shop. The panch witness has also stated that the Food Inspector used to visit the former's shop and would sit with him for chitchatting. The familiarity of the panch witness with the Food Inspector and the former's somewhat hostility with respondent-accused No.2 led the learned trial Magistrate to infer that the panch witness was not an independent witness. He might have been responsible for falsely implicating the respondents-accused in this

case.

7. According to the Food Inspector, at the time of his visit to respondent No.1 pan shop for taking sample, he was accompanied by one helper. He has however observed a mysterious silence as to who that helper was. That helper was not examined at trial as a prosecution witness. In view of the aforesaid view taken by the learned trial Magistrate to the effect that the panch witness was not an independent witness and his testimony was not worthy of credence or credibility, it was necessary for the prosecution to have examined the helper as a witness in the case. The prosecution could have moved this Court for bringing on record additional evidence by means of the testimony of that helper. Nothing of the kind has been done.

8. The learned trial Magistrate has, on the basis of the aforesaid material on record, come to the conclusion that the so-called sample of the food article was not collected according to law. The view taken by the learned trial Magistrate appears to be a possible view on the facts and in the circumstances of the case. According to well-settled principles of law governing acquittal appeals, this Court need not interfere with the order of acquittal as the view taken by the learned trial Magistrate is a possible view. In that view of the matter, the impugned judgment and order of acquittal calls for no interference by this Court in this appeal.

9. In the result, this appeal fails. It is hereby dismissed.
